

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 870 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

STATE OF GUJARAT

Versus

KANU NARSINH THAKOR

Appearance:

Shri S.R. Divetia, Additional Public Prosecutor
for the appellant-State.

MR PRADYUMAN B BHATT for Respondents Nos. 1, 2
(appointed).

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/01/97

ORAL JUDGEMENT :

The order of acquittal passed by the learned
Metropolitan Magistrate of Court No.17 at Ahmedabad on
7th May 1986 in Criminal Case No.814 of 1986 is under

challenge in this Appeal at the instance of the State Government. Thereby the learned trial Magistrate acquitted the respondents-accused of the offences punishable under sections 454, 447, 380 and 114 of the Indian Penal Code, 1860 ("the IPC" for brief) on the ground that the prosecution did not keep the witnesses present.

2. It is not necessary to set out in detail the facts giving rise to this Appeal. It may be sufficient to state that the respondents-accused were charged with the offences punishable under section 454, 447, 380 and 114 of the IPC. It is needless to say that the offences are serious in nature though the article stolen appears to be trivial in price as transpiring from the material on record. Irrespective of the price of the stolen article if the guilt is established, such offenders deserve a deterrent punishment. They could not have been leniently and lightly dealt with contrary to the law declared by this Court in its ruling in the case of State of Gujarat v. Lalit Mohan, 1989 (2) XXX (2) GLR at page 952 as confirmed by the Division Bench in its ruling in the case of State of Gujarat v. Rajendrasinh Ramjansinh & others, 1996 (3) XXXVII (3) GLR at page 470. In the aforesaid rulings this Court has clearly held that it would be the duty of the Court to see that witnesses remain present for conducting trial of the criminal case and the Court will fail in its duty if it does not take effective steps, if necessary by means of coercive measures, for keeping witnesses present. The approach of the learned trial Magistrate is obviously contrary to the aforesaid binding dictum of law pronounced by this Court in its aforesaid two rulings. It is needless to say that the learned trial Magistrate has acquitted the respondents-accused only on the ground that the prosecution did not keep the witnesses present. As aforesaid the impugned order is contrary to the aforesaid rulings of this Court and it cannot therefore be sustained in law.

3. In view of my aforesaid discussion the impugned order passed by the learned trial Magistrate has to be quashed and set aside. The matter has to be remanded to the trial court for restoration of the proceeding to file and for its fresh disposal according to law.

4. In the result this Appeal is accepted. The order of acquittal passed by the learned Metropolitan Magistrate of Court No.17 at Ahmedabad on 7th May 1986 in Criminal Case No.814 of 1986 is quashed and set aside. The matter is remanded to the learned trial Magistrate

for restoration of the proceeding to file and for its
fresh disposal according to law.

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